IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2328 OF 2004

Messrs Neo Pharma Private
Limited, 4, Shanti Nagar
Industrial Estate, Vakola,
Santacruz (East),
Mumbai-400 055. .... Petitioner

- Versus -

1. Industrial Workers' Union,
a Trade Union registered
under the Trade Unions Act,
1926, having its office at
Ismail Mansion, 188, Dr.
Ambedkar Road, Dadar,
Mumbai-400 014.

2. Shri S.M. Ratnakar,
Member, Industrial Tribunal,
Bandra (East),
Mumbai-400 051. .... Respondents

Shri P.M. Palshikar for the Petitioner.

Shri P.M. Patel for the Respondent (No.1).

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 01, 2004

ORAL JUDGMENT:

1. Heard. Rule. By consent the rule is made returnable forthwith. Upon hearing the learned Advocates for the parties and on perusal of the records it is seen that the matter was remanded specifically to consider the issue as to whether the three employees at the head-office were entitled for the wages on par with

those which were received by the employees at the godown of the petitioners. Obviously, as rightly submitted by the Advocates for both the parties, the said issue was required to be considered after analysing the materials on record to ascertain as to what are the nature of the duties performed by the three employees as well as the nature of the duties performed by the workmen at the godown, the working conditions of the three employees vis-a-vis the working conditions of the employees at the godown, including the working days and working hours as well as holidays, etc., as also the length of service of the said three employees in comparison with that of the employees working at the godown. However, the impugned award does not disclose the Industrial Tribunal having applied its mind in that regard or having analysed the materials on record to ascertain the above aspects of the matter and to arrive at the correct finding on the above issue which was remanded for its consideration. In the circumstances, without going into the other points sought to be raised in the matter, suffice to observe that the Industrial Tribunal has not exercised its jurisdiction in the manner it was required to be exercised while dealing with the issue which was required to be decided pursuant to the order of remand by this Court and therefore on that count alone the impugned order cannot be sustained and is liable to be set aside and the matter needs to be remanded again to

the Industrial Tribunal to decide the claim of the three employees at the head-office in relation to the wages on par with the employees working at the godown and to ascertain the same by analysing the materials on record bearing in mind the above noted points. For the benefit of the Industrial Tribunal, the said points are reproduced hereinbelow:-

1. What are the nature of the duties performed by these three head office employees and the nature of duties performed by the employees working in the Godown?

2. What are the working conditions of these three employees and working conditions of the Godown employees including the working days and working hours and holidays etc.?

3. Length of service of these three employees and the other employees working in the Godown.

2. Needless to say that while considering the issue as to whether the employees at the head-office are entitled for the wages as those received by the employees at the

godown, in case the Industrial Tribunal arrives at the finding adverse to the said three employees, it will be also necessary for the Industrial Tribunal to ascertain what should be the wages payable to the three employees at the head-office.

3. The petition, therefore, succeeds. The impugned award is hereby quashed and set aside and the matter is remanded to reconsider the above issues afresh bearing in mind the points noted above. The Industrial Tribunal is expected to dispose of the matter as expeditiously as possible and in any case within a period of twelve weeks from the receipt of the writ of this Court. The rule is made absolutely accordingly with no order as to costs.

4. Certified copy expedited.